

§ 2522.235

service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.220(c)(2) for the period served in the prior term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the terms of service described in § 2522.235 for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

(e) *Release prior to serving 15 percent of a term of service.* If a participant is released for reasons other than misconduct prior to completing 15 percent of a term of service, the term will not be considered one of the terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[64 FR 37413, July 12, 1999, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

45 CFR Ch. XXV (10–1–14 Edition)

**§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?**

(a) *General limitation.* An individual may receive the benefits described in § 2522.240 through § 2522.250 for no more than four terms of service in an AmeriCorps State and National program, regardless of whether those terms were served on a full-, part-, or reduced part-time basis, consistent with the limitations in § 2526.50.

(b) *Early release.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for compelling personal circumstances or for cause counts as one of the terms of service for which an individual may receive the benefits described in § 2522.240 through § 2522.250.

(c) *Release prior to serving fifteen percent of a term.* If a person is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the terms of service for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[75 FR 51410, Aug. 20, 2010]

**§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

(a) *AmeriCorps education awards.* An individual serving in an approved AmeriCorps State and National position may receive an education award from the National Service Trust upon successful completion of each of no more than four terms of service as defined in § 2522.220, consistent with the limitations in § 2526.50.

(b) *Living allowances—(1) Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided pursuant to § 2521.30 of this chapter, including an AmeriCorps program that receives educational awards only pursuant to § 2521.30(c) of this chapter, will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under § 105 of the Domestic Volunteer Service

Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993).

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2522.110(a)(3), the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the maximum, subject to the following conditions: (i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3)). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance for programs.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Waiver or reduction of living allowance by participants.* A participant may waive all or part of the receipt of a living allowance. The participant may revoke this waiver at any time during the participant's term of service. If the

participant revokes the living allowance waiver, the participant may begin receiving his or her living allowance prospective from the date of the revocation; a participant may not receive any portion of the living allowance that may have accrued during the waiver period.

(6) *Limitation on Federal share.* The Federal share, including Corporation and other Federal funds, of the total amount provided to an AmeriCorps participant for a living allowance is limited as follows:

(i) In no case may the Federal share exceed 85% of the minimum required living allowance enumerated in paragraph (b)(1) of this section.

(ii) For professional corps described in paragraph (b)(2)(i) of this section, Corporation and other Federal funds may be used to pay for no portion of the living allowance.

(iii) If the minimum living allowance requirements has been waived or reduced pursuant to paragraph (b)(4) of this section and the amount of the living allowance provided to a participant has been reduced correspondingly—

(A) In general, the Federal share may not exceed 85% of the reduced living allowance; however,

(B) If a participant is serving in a program that provides room or board, the Corporation will consider on a case-by-case basis allowing the portion of that living allowance that may be paid using Corporation and other Federal funds to be between 85% and 100%.

(c) *Financial benefits for participants during an extended term of service for disaster purposes.* An AmeriCorps participant performing extended service under § 2522.220(f) may continue to receive a living allowance under paragraph (b) and other benefits under § 2522.250, but may not receive an additional AmeriCorps educational award under paragraph (a).

[59 FR 13796, Mar. 23, 1994, as amended at 71 FR 10611, Mar. 2, 2006; 73 FR 53760, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

#### **§ 2522.245 How are living allowances disbursed?**

A living allowance is not a wage and programs may not pay living allowances on an hourly basis. Programs